S.B.CIVIL WRIT PETITION NO.3758/2005

Kewal Chand
v.
Shri Hulas Chand & Anr.

Date of Order :: 6th December, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Suresh Shrimali]
Mr. Rajesh Choudhary] for the petitioner.
Mr. J.L.Purohit, for the respondents.

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By this petition for writ legality, propriety and correctness of the order dated 15.12.2004 passed by learned Additional Civil Judge (JD) and Judicial Magistrate, First Class No.2, Bikaner in Civil Suit No.783/93 is questioned. By the order aforesaid the learned trial court dismissed an application preferred by the defendant petitioner under Order 8 Rule 1-A CPC being filed at a belated stage.

In the application under Order 8 Rule 1 CPC the applicant specifically stated that earlier an application preferred by him under Order 13 Rule 2 CPC was dismissed on the count that those documents despite within possession of the defendant were not produced but the documents sought to be produced are quite relevant for adjudication of the issue involved and those documents being closure of shop were not in possession of the applicant. It is also emphasised that no adverse effect shall be there to the suit proceedings as yet evidence of the plaintiff only has been recorded by the trial court.

Though the written statement has been filed by the defendant petitioner but certain documents were not filed by him alongwith written statement and also not been mentioned in the list of documents, however, the suit yet is at its initial stage and in any event the placing of documents concerned on record shall not delay the suit proceedings, therefore, looking to peculiar facts and circumstances of this case I consider it appropriate to accept the writ petition.

The petition for writ is accordingly allowed by setting aside the order impugned dated 15.12.2004. The application preferred by the petitioner under Order 8 Rule 1-A CPC is accepted with a direction to permit the petitioner to place on record the documents concerned subject to the condition that the petitioner pay a cost of Rs.2500/- to respondent Shri Hulas Chand within a period of 15 days from today.

(GOVIND MATHUR),J.

kkm/ps.